

Comments for September 6, 2012 Planning Commission Study Session regarding Wireless Ordinance

The following comments are on the staff regarding the Wireless Telecommunications Facilities Ordinance (PA2012-057) / Code Amendment No. 2012-004 as presented to the Newport Beach Planning Commission as Agenda Item 1 at its September 6, 2012 meeting.

The comments were prepared by Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229) , and are a mix of what may seem major and minor points.

Additional Background Information

In addition to my previous comments reproduced on pages 38-48 of the staff report, I would like the Planning Commission to be aware of the following e-mail message sent, at her request, to Janet Johnson Brown (and copied to Jim Campbell) on August 3, following the July 25, 2012 "stakeholders" meeting described near the bottom of page 1 of the staff report:

Janet (& Jim),

Sorry to be so slow in getting this to you, but to follow up on our brief conversation after the July 25 wireless "stakeholders" meeting, with reference to the new Wireless Communication Facilities regulations in the City of Oceanside Local Coastal Program considered by the California Coastal Commission as Item 8a at their July 11, 2012 meeting (see complete text in the CCC staff report: W8a-7-2012.pdf, pages 23-42):

<http://documents.coastal.ca.gov/reports/2012/7/W8a-7-2012.pdf>

the features I saw that seemed particularly innovative and useful to CNB included:

1. Approval of telecom permit requires findings of a verifiable deficiency in existing coverage and that the means proposed to correct the deficiency are the least intrusive possible (Section 3907.A). This by now time-honored standard is, I think, no longer as clearly articulated in our own proposed code. Note also that although the regulation of applications to use the Oceanside public rights-of-way are rather vague (Section 3910.A), each encroachment permit ultimately requires the same findings to be made by the City Council (Section 3910.B).
2. To accommodate changing technology, Oceanside approvals are limited to 10 years with a possibility of three 2-year administrative extensions (maximum of 16 years total) after which re-application is required (Section 3915.B).
3. As with the CNB proposal, upon adoption of the new code, existing facilities that would not comply with the new standards become legally non-conforming, but in Oceanside they are NOT allowed to continue indefinitely simply by staying in compliance with the original code. Anything other than routine maintenance of existing operational equipment triggers a re-evaluation of the facility under the new code (Section 3916). A fairly complete re-evaluation can also be triggered, at the

planner's discretion, even when sites built under the new code are modified (Section 3917).

4. The Application Submittal Requirements in Section 3906 also seem pretty thorough. As best I can tell the similar detailed submittal requirements in our current CNB telecom code were inadvertently omitted from the proposal submitted to the Planning Commission.

5. Finally, Oceanside did not seem to feel any need to single out DAS facilities for special treatment (Section 3919).

I will try to submit more detailed comments on the current CNB proposal next week.

Yours,

Jim Mosher

Although other commitments prevented me from submitting the promised more detailed follow-up, I continue to feel these comments remain relevant and that the Oceanside ideas could be usefully incorporated into our proposed ordinance.

Subsequent to this, Costa Mesa introduced at its August 21, 2012 meeting (agenda item PH-2) an ordinance regarding Wireless Facilities in the Public Right-of-Way, which was adopted just two days ago, and also contains interesting provisions.

Comments on the Staff Report

As a Newport Beach citizen I am pleased to see that City staff has not caved in to most of the demands presented by the industry representatives. I feel, however, that the proposed ordinance still needs considerable more work.

Because of the extreme lateness of this submission I will just comment briefly on a few of the specific recommendations listed on pages 2-6 of the staff report:

Item 1 (Discretionary Permit Process): Without an extremely precise definition of what falls in "Class 1," I think the suggestion to allow them to be "*administratively approved without providing notice to the public*" is a very poor one. Even if the decision is "administrative" the absence of public notice means the public has no practical ability to appeal if they have reason to believe the administrative decision was incorrect. In my experience the Zoning Administrator is not overburdened, and considers considerably more minor matters. Nor is it an onerous burden on the applicant. In fact, a Zoning Administrator hearing took place simultaneously with the Telecom Stakeholders meeting on July 25th and two matters were disposed of in a total of 5 minutes.

Item 2. (Legal Nonconforming facilities): I find the recommendation hard to follow, but I think changing technology means that all wireless permits *should* be subject to sunset provisions (as in the Oceanside and Costa Mesa codes referenced above), when legally non-conforming facilities are upgraded they *should* be required to come into conformance with the current codes, not the local regulations in effect at the time of their initial approval (as I believe the proposed code reads).

Item 6. (Location Preferences, Prohibited Locations): I may be missing something, but I don't see the "*Planning Commission review at public hearings for exceptions to location standards*" that the report suggests is in the proposed code.

Item 12. (Permit Review Procedures): Again, I do not think *any* telecom applications should be exempted from public notice.

Item 13. (License Agreements for City-Owned Property): I feel it is very important that the public have a voice in the use of public property. Although somewhat outside the scope of the Study Session, City Charter Section 421 currently ensures that by restricting the authority to bind the City to contracts to the City Council – which in turn can act only at a publicly noticed meeting. A proposed "update" to the Charter on this November's ballot would overturn that longstanding protection by giving the Council the power to allow City staff to decide what public property it is appropriate to lease out for private commercial use, presumably without any public notice or input. I view that as a very bad change.

Additional Comment

I am very disappointed that staff has not seen fit to retain the restrictions and discretion found in our existing Wireless Code regarding the siting of telecom facilities that impact private views, or otherwise detrimentally impact private property (please see page 3 of my earlier comments as reproduced on page 40 of the 79 page Study Session staff report). I hope the Commission will ask for those provisions to be kept.